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May 9, 2006

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: November 28, 2005

Case Number: TSO-0316

This decision concerns the eligibility of XXXXX X XXXXXXXX (hereinafter referred to as "the Individual") to have his access authorization restored under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."¹

I. BACKGROUND

The Individual's access authorization was suspended by a DOE Local Security Office (LSO) when it received derogatory information raising a significant doubt about his eligibility to maintain his access authorization. This derogatory information was revealed by a background investigation of the Individual. After conducting this background investigation, the LSO concluded that the Individual failed to resolve the substantial doubts about his eligibility for a DOE access authorization that the derogatory information raised. Accordingly, an administrative review proceeding was initiated. *See* 10 C.F.R. § 710.9. The LSO then issued a letter notifying the Individual that it possessed information that raised a substantial doubt concerning his eligibility for access authorization (the Notification Letter). The Notification Letter alleges that the Individual has

(1) Deliberately misrepresented, falsified, or omitted significant information from a . . . Questionnaire for Sensitive (or National Security) Positions, . . . a personnel security interview, written or oral statements made in response to official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization, or proceedings conducted pursuant to § 710.20 through § 710.31, 10 C.F.R. § 710.8(f) (Criterion F);

¹ An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as an access authorization or a security clearance.

(2) Trafficked in, sold, transferred, possessed, used, or experimented with a drug or other substance listed in the Schedule of Controlled Substances established pursuant to section 202 of the Controlled Substances Act of 1970 (such as marijuana, cocaine, amphetamines, barbiturates, narcotics, etc.) except as prescribed or administered by a physician licensed to dispense drugs in the practice of medicine, or as otherwise authorized by Federal law. 10 C.F.R. §710.8(k) (Criterion K); and

(3) Engaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security . . . 10 C.F.R. § 710.8(l) (Criterion L).

The Individual filed a request for a hearing in which he made a general denial of the allegations contained in the Notification Letter. This request was forwarded to the Director of the Office of Hearings and Appeals (OHA), who appointed me as Hearing Officer.

At the Hearing, the LSO presented no witnesses. The Individual testified on his own behalf and called four witnesses: two friends, his sister and his girlfriend. *See* Transcript of Hearing, Case No. TSO-0316 (hereinafter cited as “Tr.”).

II. STANDARD OF REVIEW

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). The regulations state that “[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.7(a). I have considered the following factors in rendering this opinion: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual's age and maturity at the time of the conduct; the voluntariness of the Individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

III. FINDINGS OF LAW AND FACT

A. Criterion F

On November 3, 2000, the Individual completed and submitted a Questionnaire for National Security Positions (QNSP) to the LSO for the purpose of obtaining a DOE access authorization. This QNSP appears in the Record as DOE Exhibit 9. Question 24a of that QNSP asked “Since the age of 16 or in the last 7 years, whichever is shorter, have you illegally used any controlled substance, for example, marijuana, cocaine, crack cocaine, hashish, narcotics (opium, morphine, codeine, heroin, etc.), amphetamines, depressants (barbiturates, methaqualone, tranquilizers, etc.), hallucinogenics (LSD, PCP, etc.), or prescription drugs?” The Individual answered this question “yes.” DOE Exhibit 9 (emphasis in the original). Question 24c of that QNSP asked “In the past 7 years, have you been involved in the illegal purchase, manufacture, trafficking, production, transfer, shipping receiving, or sale of any narcotic, depressant, stimulant, hallucinogen, or cannabis for your own intended profit or that of another?” The Individual answered this question “yes.” *Id.* The QNSP then requested the Individual to identify each illegal drug he had used, provide the dates on which he had used the illegal drug, and indicate the number of times he had used the drug. The Individual indicated that he had used one illegal drug, “speed” on an estimated 10 occasions between in December 1997 and May 1998. *Id.*

Because the Individual’s admitted illegal drug use raised security concerns, the LSO requested that the Individual participate in a Personnel Security Interview (PSI). That PSI was conducted on April 26, 2001. The transcript of the April 26, 2001 PSI appears in the Record as DOE Exhibit 11. During the April 26, 2001 PSI, the Individual was asked if he had ever used marijuana. He answered in the affirmative.² DOE Exhibit 11 at 25. The Individual also reiterated that he had used “speed.” *Id.* at 26. The Individual specifically denied that he had used a number of illegal drugs, including psychoactive mushrooms, cocaine, and LSD. *Id.* at 25, 26. The Individual further indicated that he had last used marijuana in 1986. *Id.* at 28. During this PSI, the Individual signed a DOE Drug Certification in which he promised to refrain from future involvement with illegal drugs. *Id.* at 40, 41; DOE Exhibit 7. As a result, the DOE determined that the security concerns raised by the Individual’s illegal drug use were resolved and the Individual received a DOE access authorization.

During a reinvestigation of the Individual, the Individual was once again required to complete and submit a QNSP. On October 27, 2004, the Individual submitted this QNSP, which appears in the Record as DOE Exhibit 8. In this QNSP, the Individual again answered “yes” to Questions 24a and 24c. DOE Exhibit 8. The October 27, 2004 QNSP then requested the Individual to identify each illegal drug he had used, provide the dates on which he had used the illegal drug, and indicate the number of times he had used the drug. In response, the Individual indicated that he had used two illegal drugs, “speed” on an estimated 10 occasions between December 1997 and May 1998 and cocaine on two occasions between April 1999 and May 2000. *Id.*

² The Individual had failed to include marijuana in his response to Question 24 of the November 3, 2000 QNSP.

The Individual's answers to questions posed on the October 27, 2004 QNSP raised a number of security concerns. In addition to indicating that the Individual's drug use had been more extensive than he had previously admitted, the Individual's answers to the October 27, 2004 QNSP had omitted mention of the Individual's previously admitted marijuana use. More importantly, the Individual's admission, in the October 27, 2004 QNSP, that he had used cocaine during the April 1999 through May 2000 time period indicated that his answer to Question 24 of the November 3, 2000 QNSP was suspiciously incomplete. As a result of the security concerns raised by the Individual's October 27, 2004 QNSP, the LSO requested that the Individual participate in a second Personnel Security Interview (PSI). The transcript of that PSI, conducted on May 6, 2005, appears in the Record as DOE Exhibit 10. During this PSI, the Individual further admitted that he had used LSD in the late 1980s and psychoactive mushrooms in 1988 or 1999. DOE Exhibit 10 at 22, 30-31.³ Since the Individual had specifically denied using these drugs during the April 26, 2001 PSI, the Individual's admissions during the May 6, 2005 PSI revealed that the Individual had provided false information in the previous PSI as well as both QNSPs.⁴ DOE Exhibit 11 at 25-26.

In summary, the Record includes substantial evidence showing that the Individual provided false information to DOE Security Officials on several occasions. The answers provided by the Individual in response to the November 3, 2000 QNSP omitted mentioning the Individual's use of psychoactive mushrooms, marijuana, cocaine, mushrooms and LSD. During the ensuing April 26, 2001 PSI, the Individual continued to conceal his use of cocaine and LSD. The answers provided by the Individual in response to the October 27, 2004 QNSP omitted mentioning his marijuana, LSD and psychoactive mushroom use. These omissions and falsifications provide a sound basis for the LSO's decision to invoke Criterion F.

Providing false information in a QNSP or PSI raises significant security concerns under Criterion F. False statements by an individual in the course of an official inquiry regarding a determination of eligibility for DOE access authorization raise serious issues of honesty, reliability, and trustworthiness. The DOE security program is based on trust, and when a security clearance holder breaches that trust, it is difficult to determine to what extent the individual can be trusted again in the future. *See e.g., Personnel Security Hearing, Case No. VSO-0281*, 27 DOE ¶ 82,821 at 85,915 (1999), *affirmed*, 27 DOE ¶ 83,030 (2000) (case terminated by OSA, 2000); *Personnel Security Hearing, Case No. VSO-0013*, 25 DOE ¶ 82,752 at 85,515 (1995) *affirmed* (OSA, 1995).

³ The Individual also admitted that his use of marijuana was much more extensive than he had previously indicated in the April 26, 2001 PSI. DOE Exhibit 10 at 50-56.

⁴ The Notification Letter, apparently reflecting the LSO's inaccurate conclusion that methamphetamines constitute a class of drugs separate and distinct from amphetamines (commonly referred to as "speed"), incorrectly alleges that the Individual omitted mentioning his use of crystal methamphetamines in the November 3, 2000 QNSP and the April 26, 2001 PSI. See DOE Exhibit 10 at 25-27. In both the November 2000 QNSP and the April 26 2001 PSI, the Individual indicated that he had used "speed" or amphetamines. According to the United States Drug Enforcement Agency, "Amphetamine, dextroamphetamine, methamphetamine, and their various salts, are collectively referred to as amphetamines. In fact, their chemical properties and actions are so similar that even experienced users have difficulty knowing which drug they have taken." Drug Enforcement Agency Website at <http://www.dea.gov/pubs/abuse/5-stim.htm>.

A finding of derogatory information does not, however, end the evaluation of evidence concerning the individual's eligibility for access authorization. *See Personnel Security Hearing, Case No. VSO-0244*, 27 DOE ¶ 82,797, *affirmed* (OSA, 1999); *Personnel Security Hearing, Case No. VSO-0154*, 26 DOE ¶ 82,794 (1997), *affirmed*, *Personnel Security Review, Case No. VSA-0154*, 27 DOE ¶ 83,008 *affirmed* (OSA, 1998). In the end, like all OHA Hearing Officers, I must exercise my common sense judgment in determining whether an individual's access authorization should be restored after considering the applicable factors prescribed in 10 C.F.R. § 710.7(c). Therefore, I must consider whether the Individual has submitted sufficient evidence of mitigation to resolve the security concerns raised by his failure to honestly disclose his illegal drug use.

In a number of decisions, DOE hearing officers have considered the implications of falsifications. The factors considered in these cases include the following: whether the individual came forward voluntarily to renounce his falsifications, *compare Personnel Security Hearing, Case No. VSO-0037*, 25 DOE ¶ 82,778 (1995), *affirmed* (OSA, 1996) (voluntary disclosure by the individual), *with Personnel Security Hearing, Case No. VSO-0327*, 28 DOE ¶ 83,005 (2000), *affirmed* (OSA 2000) (falsification discovered by DOE security); the length of time the falsehood was maintained; whether a pattern of falsification is evident; and the amount of time that has transpired since the individual's admission. *See Personnel Security Hearing, Case No. VSO-0327* (2000), *affirmed* (OSA, 2000) (less than a year of truthfulness insufficient to overcome long history of misstating professional credentials). *See also Personnel Security Hearing, Case No. VSO-0289*, 27 DOE ¶ 82,823 (1999) (19 months since last falsification not sufficient evidence of reformation from falsifying by denying drug use); *Personnel Security Hearing, Case No. VSO-0319*, 27 DOE ¶ 82,851 (2000), *affirmed* (OSA, 2000).

Turning to the present case, I note that the Individual revealed his falsifications. This factor weighs in his favor. However, the Record also shows that the Individual provided the LSO with false or misleading information on at least three occasions over a period of four years, thereby establishing a strong and continuing pattern of falsification. In addition, the Individual's last provision of false or misleading information occurred relatively recently, on October 27, 2004. These factors weigh heavily against a finding that the Individual has mitigated the security concerns raised by his provision of false or misleading information to the LSO.

Our previous cases have stated that a subsequent pattern of responsible behavior is of vital importance to mitigating security concerns arising from irresponsible behavior. *See Personnel Security Hearing, Case No. VSO-0499*, 28 DOE ¶ 82,850 (2002). In most cases in which hearing officers have concluded that doubts about an individual's judgment and reliability raised by evidence of falsification have been resolved, a substantial period of time has passed since the falsification. In these cases, the time period has allowed individuals to establish a pattern of responsible behavior. In those cases where an individual was unable to establish a sustained period of responsible behavior, hearing officers have generally determined that the individual was not eligible to hold an access authorization. *See Personnel Security Hearing, Case No. VSO-0448*, 28 DOE ¶ 82,816 (2001) (11 months not sufficient to mitigate four year period of deception); *Personnel Security Hearing, Case No. VSO-0327*, 27 DOE ¶ 82,844 (2000) (less than

one year of truthfulness insufficient to overcome long history of misstating professional credentials); *Personnel Security Hearing, Case No. VSO-0289*, 27 DOE ¶ 82,823 (1999) (19 months since last falsification not sufficient evidence of reformation). In the present case, the Individual has not established a significant pattern of responsible behavior.

The Individual did not reveal the full extent of his illegal drug use until the May 6, 2005 PSI.⁵ Accordingly, the Individual had not yet established even a year-long pattern of responsible behavior at the time of the hearing. As the cases cited above indicate, a year-long pattern of responsible behavior would be insufficient to mitigate a four-year period of deception.

The Individual has attempted to mitigate this four year pattern of deception by submitting evidence showing that he is an excellent employee, father, brother, friend and fiancé. Additional evidence submitted by the Individual establishes that he is financially responsible. While this evidence creates a highly favorable impression of the Individual, it cannot resolve the serious security concerns raised by his repeated provision of false information to DOE Security officials. Accordingly, the security concerns associated with the Individual's falsifications remain unresolved.

B. Criterion K

As the preceding discussion shows, the Individual has admitted to using marijuana, amphetamines, cocaine, psychoactive mushrooms and LSD. Accordingly, the information in the Record provides a sound basis to invoke Criterion K. Illegal drug use evidences an unacceptable and disturbing disregard for laws prohibiting their use. Such disregard for the law raises concerns that the Individual may similarly disregard other laws, including those which protect classified information and special nuclear materials. *See Personnel Security Hearing, Case No. VSO-0116*, 26 DOE ¶ 82,765 at 85,602 (1997), *citing Personnel Security Hearing, Case No. VSO-0013*, 25 DOE ¶ 82,752 at 85,512 (1995)). Moreover, the use of illegal drugs, and the disregard for law and authority that such use suggests, indicate a serious lapse in judgment and maturity. Involvement with illegal drugs may also render the user susceptible to blackmail or coercion.

The Individual repeatedly testified that drugs were no longer part of his life and would not be in the future. Tr. at 116, 128. Moreover, two of the Individual's character witnesses: -- his live-in girlfriend of 14 years and his sister -- testified that they were unaware of any recent illegal drug use by the Individual. Tr. at 73-74, 83, 89. In addition, the Individual has shown that his

⁵ Using the May 6, 2005 PSI as the starting date for a period of responsible behavior might be unduly charitable. The transcript of the May 6, 2005 PSI reveals that, even at that point in time, the Individual was not meeting the high standard of candor required of those possessing a DOE Access Authorization. During that PSI, the Individual was asked why he had omitted several illegal drugs from a QNSP. DOE Exhibit 10 at 35. The Individual responded by stating "Cause it wasn't in the timeframe. I thought it was like a certain amount of timeframe, uh my mistake. Seven years it says." Id. The Individual was then reminded that his use of cocaine was clearly within the timeframe. Id. The Individual responded by stating "Yeah, and if I, I don't know why I left that out. . . ." Id. at 36. The Individual was subsequently asked if he had provided inaccurate information because he was ". . . afraid to disclose more illegal drug use than [he] had admitted?" Id. at 43. The Individual responded by stating "probably." Id. at 44.

employer currently subjects its employees to random drug testing, by submitting written documentation of his employer's drug testing policy and two copies of his random drug testing results which indicated that these tests were negative. Individual's Exhibit C.

For these reasons, I am convinced that the Individual no longer uses illegal drugs and is unlikely to resume their use in the future. Accordingly, I find that the security concerns raised by the Individual's illegal drug use have been sufficiently mitigated.

C. Criterion L

The Notification Letter notes that the Individual lied to a former employer about his illegal drug use. Notification Letter ¶ III. The Individual admits this allegation. Tr. at 130-32. However, the Record shows that the Individual last worked for that employer in October of 2000. Individual's Exhibit B. In most cases, I would find that the security concerns raised by this act of dishonesty had been mitigated by the passage of time. However, the Individual's subsequent history of repeated provision of false information has perpetuated the relevance of this security concern. Accordingly, I find that the security concerns raised under Criterion L remain unresolved.

IV. CONCLUSION

For the reasons set forth above, I conclude that the Individual has resolved the security concerns raised under Criterion K. However, the Individual has not resolved the security concerns raised under Criteria F and K. Therefore, the Individual has not demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, it is my opinion that the Individual's access authorization should not be restored. The Individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Hearing Officer
Office of Hearings and Appeals

Date: May 9, 2006